



# INFORMATION SHEET

Serving the People of California

## REPORTING AND PAYMENT FOLLOWING AN ASSESSMENT FOR MISCLASSIFIED WORKERS

When the Employment Development Department (EDD) determines that workers are misclassified as independent contractors and that the workers are actually employees, the determination applies to both past and future periods. The Department's Notice of Assessment serves as official notice to the employer as provided by the California Unemployment Insurance Code (CUIC). The employer should begin properly reporting the workers for state employment tax purposes. The following information will assist employers making business decisions regarding tax payments and wage reporting.

### Business Decision Options

As a result of the Department's determination that workers are employees rather than independent contractors, the employer is faced with three decisions with respect to state employment tax responsibilities.

1. Should the assessment for employment taxes be paid?

Generally, the employer will pay the assessment if they agree with the audit determination. The Department recognizes that an audit assessment may represent a large liability which cannot be immediately paid. Therefore, the Department will allow the employer to make installment payments to satisfy a liability resulting from an assessment. Up to 18 months will be allowed, under certain conditions, by requesting this option. If a longer period is needed, you may be required to submit additional financial information. Additionally, if the employer disagrees with the determination and files a petition for reassessment, the employer may decide not to pay the assessment until the California Unemployment Insurance Appeals Board (CUIAB) issues a decision on the case. Any decision to delay payment of the assessed liability could ultimately increase interest charges.

If the employer disagrees with the assessment and files a petition for reassessment, the assessment can

be pre-paid to avoid the cost of accruing interest. With this prepayment, the employer's petition converts automatically to a claim for refund of the disputed amount.

If the employer pays the liability to avoid accruing interest, and the petition for review of a claim for refund is resolved in the employer's favor, the Department will refund any amount that has been overpaid plus interest, if funds are available.

2. Should a petition for reassessment be filed with the CUIAB to appeal the audit determinations and assessment?

Every employer has a right to file a petition for reassessment, generally within 30 days after an assessment is issued (see your Notice of Assessment for specific petition rights and procedures). An employer may file a petition for reassessment when they disagree with the Department's determination that workers are employees. A petition is filed with the CUIAB, which is an independent body established to hear and render decisions on petitions filed. To help the employer decide whether to file a petition, the Department auditor explains the basis for the audit assessment and the employer's petition rights. The auditor also offers a pre-assessment conference to the employer, which is attended by the auditor's supervisor. If the reasons for the audit assessment were not explained to the employer, or if the employer wishes to meet and discuss the audit with the auditor and his/her supervisor, the employer should contact the auditor or their supervisor to schedule a conference prior to the expiration of the period for filing a petition. The final decision to file a petition rests solely with the employer.

3. Should the workers be reported as employees for employment tax purposes after the period of the assessment?

Whether an employer agrees or disagrees with an audit determination, the Department's official position is that the workers held to be employees in the audit should be reported as employees for periods following the assessment. However, when an employer appeals the assessment, the Department may wait for the CUIAB to resolve the petition for reassessment before enforcing compliance for subsequent periods. In these cases the employer must decide whether to report the workers. The Department routinely conducts follow-up audits when a petition for reassessment is resolved and the CUIAB upholds the Department's determination. If this happens, the employer will be subject to back taxes (including amounts that should have been withheld from employee wages), penalties and interest, if they have not reported the workers for periods following the original assessment. If, on the other hand, the

employer reports the workers and the petition for reassessment is resolved in the employer's favor, the employer may file a claim for refund of the taxes paid for periods after the assessment. The Department will approve these claims for refund when the workers for whom taxes were paid performed services under the same conditions as the workers covered by the assessment and CUIAB decision.

The attached decision chart is intended to assist the employer in evaluating the various options available to the employer for both the periods covered by the assessment and future periods. If you have any questions regarding this Information Sheet or the time limits in which to claim a refund, please contact the nearest Employment Tax Customer Service Office. Offices are listed in the State Government Section of the telephone book under Employment Development Department, Employment Tax Information.

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities. TDD Users, contact the California Relay Service: 1-800-735-2929.

## Treatment of Worker's Wages Subsequent to the Assessment

Options	Effect on Interest	Effect on Penalties	Effect on Department Collection Actions	Effect on PIT Abatements	Petition Results
<u>Deduct</u> SDI and PIT, report workers' wages, remit workers' deductions, and pay employer contributions for subsequent periods.	No interest charges apply if paid by due dates.	No penalty charges apply if paid by due dates.	No collection actions.	Not applicable.	If you petitioned the original assessment, you should request a refund in writing with each payment to fully protect your right to a refund. A final decision in your favor will result in a refund of employer contributions, worker contributions you are able to refund to workers, and interest thereon, if available. Personal income tax deductions are not refundable.
Do <u>not</u> deduct SDI and PIT, or report and pay for subsequent periods.  Note: Department policy is to monitor subsequent periods and the results of petitions.  A subsequent audit may be scheduled if the CUIAB decision is not in your favor and you have not reported the misclassified workers subsequent to the original audit.	If a subsequent audit is conducted, you will be assessed interest charges from due dates to date of payment.	If a subsequent audit is conducted, the Department may charge additional penalties under Sections 1112.5, 1126, 1126.1, 1127, and/or 1135 CUIC.	If a subsequent audit is conducted and an assessment is issued, the Department will institute collection actions unless full payment is made, a timely petition for reassessment is filed, or arrangements are made to pay the liability through installment payments.	If a subsequent audit is conducted, and an assessment is issued, properly completed DE 938Ps will result in credit for PIT and appropriate penalties and interest.	If you petitioned the original assessment and the final decision is <u>not</u> in your favor, the Department may conduct an audit of the period subsequent to the original assessment. If the circumstances have not changed, the Department will issue an audit assessment covering the subsequent period.

**SEE PAGE 4 FOR ADDITIONAL INFORMATION**

## Decisions to Make With Respect to the Assessment

Options	Effect on Interest	Effect on Penalties	Effect on Department Collection Actions	Effect on PIT Abatements	Petition Results
Pay the assessment in full, or enter into an approved installment payment plan with the Department,* and do not file a petition for reassessment.	Interest charged on the unpaid balance to date of payment.	Additional 10% penalty under Section 1135 CUIB will not be charged if paid within 30 days from date of assessment notice.	If paid in full, there is not action.  If a payment plan is entered into, <u>no</u> involuntary collection action will be initiated if the payment plan is maintained by the employer. A tax lien may be filed to protect the state's interests.	Properly completed DE 938Ps will result in refund or credit PIT and appropriate penalties and interest.	Not applicable.
File a petition for reassessment and pay the assessment in full, or enter into an approved installment payment plan with the Department.*	Interest charged on the unpaid balance to date of payment.	Additional 10% penalty under Section 1135 CUIB will not be charged if paid within 30 days from date of assessment notice, or within 30 days from a final CUIAB decision.	The Department will not institute collection actions unless the employer fails to maintain the payment plan <u>and</u> 30 days have elapsed following a CUIAB decision.	Properly completed DE 938Ps will result in refund or credit of PIT and appropriate penalties and interest.	If a final CUIAB decision is in your favor, the amounts paid are refunded with interest, if available. Any unpaid portion of the assessment will be canceled. If it is not in your favor, 30 days from the date of the decision, the assessment is final, and an additional 10% penalty is charged on any unpaid contributions.
File a petition for reassessment and do <u>not</u> pay the assessment.	Interest continues to accrue on unpaid liability.	Additional 10% penalty under Section 1135 does not apply until 30 days from a final CUIAB decision.	Department will not institute collection actions on a petitioned liability until 30 days after a final decision is issued by the CUIAB.	Properly completed DE 938Ps will result in credit for PIT and appropriate penalties and interest.	If a CUIAB decision is in your favor, the assessment will be canceled. If it is <u>not</u> in your favor, 30 days from the date of the decision, the assessment is final and 10% penalty under Section 1135 is charged on unpaid contributions. The Department will then commence collection action unless full payment is made, or arrangements are made to pay the liability through installment payments.*
Do <u>not</u> pay the assessment or file a petition for reassessment.	Interest continues to accrue on unpaid liability.	Additional 10% penalty under Section 1135 CUIB charged when not paid within 30 days from date of assessment notice.	Department will institute collection actions unless full payment is made, or arrangements are made to pay the liability through installment payments.*	Properly completed DE 938Ps will result in credit for PIT and appropriate penalties and interest.	Not applicable.

\*Please refer to *Information Sheet: Payment Proposal*, DE 631P for additional information about, and qualifications for, installment payment plans.